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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

SALVADOR MANUEL
MENDOZA, III,

Plaintiff,

v.

NANCY A. BERRYHILL¹, *Acting
Commissioner of Social Security,*

Defendant.

Case No. ED CV 16-2190 JCG

**MEMORANDUM OPINION AND
ORDER**

Salvador Manuel Mendoza, III (“Plaintiff”) challenges the Social Security Commissioner’s decision denying his applications for disability benefits. Plaintiff contends that the Administrative Law Judge (“ALJ”) erred by improperly assessing his credibility. (*See* Joint Stip. at 4-5, 15-18.) The Court agrees with Plaintiff for the reasons discussed below.

¹ The Court **DIRECTS** the Clerk of Court to update the case caption to reflect Nancy A. Berryhill as the proper Defendant. *See* Fed. R. Civ. P. 25(d); (Corrected Joint Stipulation (“Joint Stip.”) at 3 n.1).

1 A. The ALJ Improperly Assessed Plaintiff’s Credibility

2 As a rule, absent a finding of malingering, an ALJ can reject a claimant’s
3 subjective complaints by “expressing clear and convincing reasons for doing so”
4 supported by substantial evidence. *Benton ex rel. Benton v. Barnhart*, 331 F.3d 1030,
5 1040 (9th Cir. 2003); *Brown-Hunter v. Colvin*, 806 F.3d 487, 489, 492-93 (9th Cir.
6 2015).

7 Here, however, the ALJ issued a general finding that failed to (1) identify what
8 testimony he found not credible², and (2) tie that testimony to the evidence he believed
9 undermined Plaintiff’s complaints. (See Administrative Record (“AR”) at 18-20);
10 *Brown-Hunter*, 806 F.3d at 493 (“General findings are insufficient; rather, the ALJ
11 must identify what testimony is not credible and what evidence undermines the
12 claimant’s complaints.” (citation and internal quotation marks omitted)).

13 Additionally, the ALJ’s treatment finding — that Plaintiff “may” have
14 exaggerated his symptoms because he was treated conservatively with medication
15 monitoring — also lacks sufficient specificity³. (AR at 20); see *Brown-Hunter*, 806
16 F.3d at 493; *Henshaw v. Colvin*, 2016 WL 541408, at *10 (E.D. Cal. Feb. 11, 2016)
17 (“[T]he ALJ must explain what statements were not credible and link those statements
18 to the evidence of successful treatment of [claimant’s] conditions through
19 medication.”).

20 Moreover, the ALJ’s finding that Plaintiff’s credibility was diminished by the
21 objective evidence of record, followed simply by a summary of some of the medical
22 evidence, is insufficient. (AR at 18-20); see *Brown-Hunter*, 806 F.3d at 494
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25 ² This is particularly problematic here because the ALJ found Plaintiff’s complaints “partially
26 credible.” (AR at 18, 20.) The decision fails to identify what part of the testimony was not credible,
and what part was credible.

27 ³ This reason is similarly problematic because the ALJ found that Plaintiff had 13 severe
28 impairments, but failed to identify what testimony about what impairments was undercut by the
treatment Plaintiff received. (AR at 16, 20.)

1 (credibility determination is insufficient when ALJ “simply state[s] [his] non-
2 credibility conclusion and then summarize[s] the medical evidence”).

3 In any event, the purported lack of objective medical evidence supporting
4 Plaintiff’s complaints cannot, by itself, support the credibility determination. (AR at
5 18, 20); *see Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (lack of objective
6 medical evidence supporting claimant’s symptoms and limitations cannot, by itself,
7 support a credibility finding); *Dschaak v. Astrue*, 2011 WL 4498835, at *1 (D. Or.
8 Sept. 27, 2011) (“[O]nce the[] other bases for the ALJ’s decision were discarded as
9 erroneous, the ALJ’s credibility determination could not rely solely on conflicts with
10 the medical evidence.”).

11 Thus, the ALJ improperly assessed Plaintiff’s credibility.

12 B. Remand is Warranted

13 With error established, this Court has discretion to remand or reverse and award
14 benefits. *McAllister v. Sullivan*, 888 F.2d 599, 603 (9th Cir. 1989). Where no useful
15 purpose would be served by further proceedings, or where the record has been fully
16 developed, it is appropriate to direct an immediate award of benefits. *Benecke v.*
17 *Barnhart*, 379 F.3d 587, 595-96 (9th Cir. 2004). But where outstanding issues must be
18 resolved before a determination can be made, or where the record does not make clear
19 that proper evaluation of the evidence would require a disability finding, remand is
20 appropriate. *Id.* at 594.


21 Here, in light of the error, the ALJ shall reconsider Plaintiff’s subjective
22 complaints and the resulting functional limitations, and either credit his testimony or
23 provide clear and convincing reasons, supported by substantial evidence, for rejecting
24 it. *See Benton*, 331 F.3d at 1040. Further, if the ALJ rejects Plaintiff’s allegations, he
25 must specifically identify what testimony is not credible, and what evidence
26 undermines his complaints. *See Brown-Hunter*, 806 F.3d at 493.

27 Finally, the Court is mindful that “the touchstone for an award of benefits is the
28 existence of a disability, not the agency’s legal error.” *Brown-Hunter*, 806 F.3d at 495.

1 Because it is unclear, on this record, whether Plaintiff is in fact disabled, remand here
2 is on an "open record." *Id.*; *Burrell v. Colvin*, 775 F.3d 1133, 1141-42 (9th Cir. 2014).
3 Given the necessity of remand, the parties may freely take up all issues raised in the
4 Corrected Joint Stipulation, and any other issues relevant to resolving Plaintiff's claim
5 of disability, before the ALJ. Either party may address those points in the remanded,
6 open proceeding.

7 Based on the foregoing, IT IS ORDERED THAT judgment shall be entered
8 **REVERSING** the decision of the Commissioner denying benefits and **REMANDING**
9 the matter for further administrative action consistent with this decision.

10
11 DATED: 7.5.2017

12
13 
14 Hon. Jay C. Gandhi
United States Magistrate Judge

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16 **This Memorandum Opinion and Order is not intended for publication. Nor is it**
17 **intended to be included or submitted to any online service such as**
18 **Westlaw or Lexis.**

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